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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,750	03/22/2004	Todd Peterson	IVGN 403.1 Div (L)	2424

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EXAMINER	
PRITCHETT, JOSHUA L	
ART UNIT	**PAPER NUMBER**
2872	
MAIL DATE	**DELIVERY MODE**
05/30/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	**Application No.** 10/806,750	**Applicant(s)** PETERSON ET AL.	
	Examiner 571-272-2314 Joshua L. Pritchett	**Art Unit** 2872	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 14 May 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:
   a) ☒ The period for reply expires *3* months from the mailing date of the final rejection.
   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

   Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
   (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
   (b) ☐ They raise the issue of new matter (see NOTE below);
   (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
   (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

   NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).
4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
   The status of the claim(s) is (or will be) as follows:
   Claim(s) allowed: _____.
   Claim(s) objected to: _____.
   Claim(s) rejected: *1-8,14-16,18,19 and 32-35*.
   Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

Examiner AU2872

Continuation of 11. does NOT place the application in condition for allowance because: Applicant argues the prior art fails to teach or suggest dyanmic fluid properties. Schultz mentions both flow of blood and three dimensional mostion. The examiner considers both of those characteristics as dynamic fluid properties. Applicant argues passing reference does not amount to anticipation. There is no minimal standard for the amount of discussion required for a reference to be prior art. If the reference states some teaching no matter how brief and the date of the reference predates the application then the teaching is prior art. Applicant argues the prior art fails to teach a method for directly measuring particle distribution without the use of an additional entity. The applicant argument uses the phrase, "without an additional entity" but the claim language states, "not bound to an additional entity." The examiner does not consider these two phrases to by the same. Schultz teaches measuring without the particles being bound to another entity. Applicant argues the prior art fails to teach fluid mixing. Applicant appears to think the limitation requires concurrent measuring and mixing. The claim language is broad enough to include both pre-mixing and concurrent mixing. Applicant argues animal cells are not fluid because they do not confrom the outer wall of a container. The exterior wall of an animal cell is a flexible membrane capable of being compressed or flexed to form different shapes. As such it can conform to the walls of a container. Applicant argues the prior art does not teach the same use of particles in the fluid as in the current application and states that the complete detail of the ivention must be shown for anticipation. The level of detail required is only the level of detail established by the claim language. Here the claim language provides minimal detail and the prior art teaches the limitations as stated within the claim language. Applicant argues Tateiwa fails to teach the laser light source evaporating the fluid. Tateiwa suggests the fluid is evaporated by the laser light by stating that in order for the fluid to remain in liquid form cooling must be supplied to condense any liquid vapor. Thus Tateiwa acknowledges that evaporation may occur. Applicant argues the prior art combination is not analogous art. Both prior art references deal with particle detection similar to the curren application..